

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

IRWIN A. POPOWSKY
Consumer Advocate

(717) 783-5048

June 11, 1996

RECEIVED

JUN 11 1996

FCC MAIL ROOM

DOCKET FILE COPY ORIGINAL

Mr. William Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

Re: Implementation Of The
Telecommunications Act of 1996
Telecommunications Carriers' Use Of
Proprietary Network Information
CC Docket No. 96-115

Dear Mr. Caton:

Enclosed please find an original and eleven copies of the Comments Of The Pennsylvania Office Of Consumer Advocate, for filing with the Commission in the above-referenced matter.

Please indicate your receipt of this filing on the additional copy provided and return to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Philip F. McClelland".

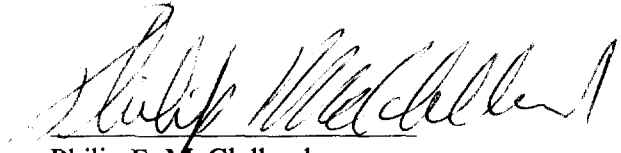
Philip F. McClelland
Assistant Consumer Advocate

Enclosure
33125

0211

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document, Comments Of The Pennsylvania Office Of Consumer Advocate, was sent by first class mail, postage prepaid, on this 11th day of June, 1996 to the parties listed below



Philip F. McClelland
Assistant Consumer Advocate

Office Of The Secretary
Federal Communications Commission
Room 222
1919 M Street
Washington, DC 20554

International Transcription Service
Suite 140
2100 M Street, N.W.
Washington, DC 20037

Reed Hundt
Chairman
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

Janice Myles
Common Carrier Bureau
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

Rachelle Chong
Commissioner
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

Susan Ness
Commissioner
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

James Quello
Commissioner
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

RECEIVED

JUN 11 1996

CC Docket No. 96-115

FCC MAIL ROOM

IMPLEMENTATION OF THE
TELECOMMUNICATIONS ACT
OF 1996

TELECOMMUNICATIONS CARRIERS'
USE OF PROPRIETARY NETWORK
INFORMATION

COMMENTS OF THE
PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

Philip F. McClelland
Assistant Consumer Advocate

For:
Irwin A. Popowsky
Consumer Advocate

Office of Attorney General
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

DATED: June 11, 1996

I. SUMMARY

The PaOCA addresses these CPNI restrictions primarily from the standpoint of privacy which appears to be the predominant purpose of the CPNI provisions in the Act.

The CPNI provisions in the Act apply to all carriers and the FCC has no basis for determining that the privacy protections in the Act should protect some consumers, but not others, depending upon which carrier serves them.

The states should be permitted to apply greater CPNI protections so long as it is not impossible to comply with both the state and FCC restrictions.

II. INTRODUCTION

On May 16, 1996, the Federal Communications Commission (FCC) issued a public notice and request for comments (NPRM) concerning consumer privacy and the use of Customer Proprietary Network Information (CPNI) in conformance with the restrictions included in the Telecommunications Act of 1996 (Act). The Pennsylvania Office of Consumer Advocate (PaOCA) addresses these issues raised in the NPRM in these Comments

III. INTEREST OF PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

The PaOCA is an office created by the Pennsylvania General Assembly to represent the interests of consumers before state and federal agencies and courts which regulate the activities of Pennsylvania public utilities 71 Pa. Stat. Ann. § 309-4(a). As the Commission is now proposing to reconsider its CPNI rules for telecommunications carriers in compliance with the Act, these rules will obviously affect consumers in Pennsylvania and their carriers.

IV. PRESENTATION OF COMMENTS

A. The Telecommunications Act Of 1996 Primarily Addresses The CPNI Issue As An Issue Of Privacy.

The NPRM has recognized that the Act has addressed the issue of CPNI and has required the FCC to change the manner in which it has previously regulated the use of CPNI. NPRM at ¶ 3. The Act recognizes that these issues are primarily related to the protection of the privacy of the consumer. Section 702 of the Act, which contains the applicable Section 222, is headed “Privacy of Customer Information.” Section 222(a) also requires that: “Every telecommunications carrier has a duty to protect the confidentiality of proprietary information” The PaOCA recognizes “confidentiality” concerns as primarily relating to privacy. The FCC has recognized that Sections 222(c) and (d) were enacted in order to protect the confidentiality of consumers. NPRM at ¶ 8. PaOCA also submits that in many instances the protection of consumer privacy will ensure that competitive equity among carriers is also protected. However for the most part, the PaOCA presents these Comments primarily in order to maintain customer privacy. NPRM at ¶ 15.

B. CPNI Restrictions Should Apply To All Telecommunications Carriers In Conformance With The Telecommunications Act of 1996.

The FCC recognizes the clear language of Section 222(c) as applying broadly to “a telecommunications carrier.” NPRM at ¶ 9. Thus, all of the restrictions and limited allowances for use clearly apply to telecommunications carriers with no distinction drawn between carriers. There is no language in the statute that suggests that some carriers are covered by the provisions of Section 222 and others are not.

However, the FCC has concluded that it should not extend its preexisting CPNI requirements to carriers not restricted by those requirements, *i.e.* carriers other than AT&T, Bell

Operating Companies (BOCs) and GTE. NPRM at ¶ 40. The FCC generally concludes that it is not necessary to apply CPNI to other carriers because such restrictions “are not necessary to secure the public interest objectives of the 1996 Act.” Id. The FCC provides no explanation as to the basis for this judgment as to why it is consistent with the Act to continue to apply CPNI requirements to only AT&T, the BOCs and GTE. Therefore, the PaOCA is concerned with the FCC’s proposal to apply these restrictions only to some telecommunications carriers and not others.¹

The PaOCA emphasizes that Section 222 is a privacy protection for consumers. There is no reason to believe that the privacy of consumers served by some telecommunications carriers are deserving of protection more than others. The PaOCA submits that the privacy of all consumers is protected under the terms of Section 222 and the privacy of all consumers is equally deserving of protection regardless as to which telecommunications carriers serve them. While the FCC points out that its previous CPNI requirements were based upon some of the anticompetitive concerns addressed by Section 222, this provides no explanation as to how the privacy concerns of Section 222 are met by the limited CPNI protections that the FCC proposes. NPRM at ¶ 40.

PaOCA submits that all consumers, including all residential consumers served by any telecommunications carrier, should be protected under the terms of Section 222. The FCC has not supported its decision to only apply these protections to a limited group of consumers even if that were an option provided to the FCC.

¹ The FCC notes in Footnote 29 of the NPRM that a “telecommunications carrier” is “any provider of telecommunications service” except aggregators. Further, in the final conference report, Congress indicated that “it is the duty of every telecommunications carrier to protect the confidentiality of proprietary information” Joint Explanatory Statement at 205. Thus, Congress appears to have clearly intended that the CPNI privacy protections apply to all carriers.

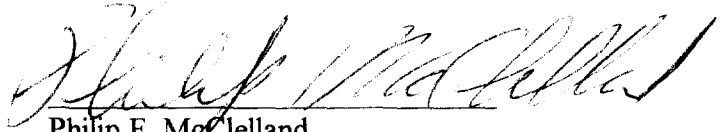
C. The FCC Should Allow States To Apply Additional CPNI Restrictions So Long As It Remains Possible To Apply Both FCC And State Requirements.

The FCC also requests comment on the extent to which states may impose additional CPNI requirements. NPRM at ¶ 17. The PaOCA submits that the FCC should allow states to apply CPNI requirements which are not inconsistent with the final FCC regulations; that is, such state regulation should be permitted so long as it is possible to comply with both the state and FCC regulations. The PaOCA is especially concerned that the FCC should not preempt state regulations which offer to consumers additional privacy protections. While the PaOCA recognizes that the FCC has an interest in promulgating national CPNI requirements which are consistent with the Act, this should not be done in such a manner that additional privacy protections are defeated.

V. CONCLUSION

The Pennsylvania Office of Consumer Advocate proposes that the Federal Communications Commission should issue regulations concerning the implementation of Section 222 consistent with the Comments set forth above.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Philip F. McClelland", is written over a horizontal line.

Philip F. McClelland
Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Attorney General
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048

DATED: June 11, 1996
37252